

GOVERNMENT CODE
CHAPTER 489. TEXAS ECONOMIC DEVELOPMENT BANK
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 489.001. DEFINITIONS. In this chapter:

(1) "Bank" means the Texas Economic Development Bank established under Section 489.101.

(2) "Fund" means the Texas economic development bank fund.

(3) "Office" means the Texas Economic Development and Tourism Office.

Added by Acts 2003, 78th Leg., ch. 814, Sec. 2.01, eff. Sept. 1, 2003.

Sec. 489.002. RULES. The office shall adopt rules necessary to carry out the purposes of this chapter.

Added by Acts 2003, 78th Leg., ch. 814, Sec. 2.01, eff. Sept. 1, 2003.

SUBCHAPTER B. CREATION AND OPERATION OF BANK; TEXAS ECONOMIC DEVELOPMENT BANK FUND

Sec. 489.101. CREATION OF BANK. (a) The office shall establish the Texas Economic Development Bank for the purpose of:

(1) providing globally competitive, cost-effective state incentives to expanding businesses operating in this state and businesses relocating to this state; and

(2) ensuring that communities and businesses in this state have access to capital for economic development purposes.

(b) The bank's effectiveness shall be measured on the basis of the number of jobs created and retained and the total amount of nonstate funds leveraged as a result of the bank's efforts.

Added by Acts 2003, 78th Leg., ch. 814, Sec. 2.01, eff. Sept. 1, 2003.

Sec. 489.102. POWERS AND DUTIES OF BANK. (a) The bank shall offer a variety of financial incentives to help communities and businesses in this state compete and succeed in the global marketplace. The bank shall assist communities in accessing financing with which to fund their economic development efforts.

(b) The bank may:

(1) provide, as provided under the programs the bank administers under Section 489.108 or otherwise as provided by law:

(A) qualifying communities with tax incentives for expanding businesses or businesses relocating to this state;

(B) incentives to lenders to:

(i) make loans to near-bankable businesses in the lender's community; and

(ii) make low-interest loans to qualifying businesses; and

(C) bond-based long-term debt financing for capital investment in public entities, in large commercial and industrial projects, and for other economic development purposes;

(2) act as a link between businesses searching for investment capital and potential investors;

(3) inform institutional lenders of economic development plans and strategies for each region of this state and encourage institutional lenders to support those plans in their marketing and investment strategies;

(4) offer communities a one-stop source of financing for their economic development efforts;

(5) provide communities with technical assistance in the development of their incentive programs to attract and retain businesses and in the design of incentive packages for specific proposals; and

(6) provide expanding businesses or businesses relocating to this state with a single source of information concerning financial incentives offered by this state to those businesses.

Added by Acts 2003, 78th Leg., ch. 814, Sec. 2.01, eff. Sept. 1, 2003.

Sec. 489.103. FEES. The bank shall charge fees to the beneficiaries of its services as the bank determines necessary. Amounts collected under this section may be used to support the administration of the bank's programs and implementation of the bank's strategies.

Added by Acts 2003, 78th Leg., ch. 814, Sec. 2.01, eff. Sept. 1, 2003.

Sec. 489.104. ALLOCATION OF RESOURCES. The bank may allocate its resources as necessary to efficiently meet the level

of demand experienced by each program or service described by Section 489.108.

Added by Acts 2003, 78th Leg., ch. 814, Sec. 2.01, eff. Sept. 1, 2003.

Sec. 489.105. TEXAS ECONOMIC DEVELOPMENT BANK FUND. (a) The Texas economic development bank fund is a dedicated account in the general revenue fund.

(b) The fund consists of:

(1) appropriations for the implementation and administration of this chapter;

(2) investment earnings under the capital access fund established under Section 481.402;

(3) fees charged under Subchapter BB, Chapter 481;

(4) interest earned on the investment of money in the fund;

(5) fees charged under this chapter;

(6) investment earnings from the programs administered by the bank;

(7) amounts transferred under Section 2303.504(b), as amended by Article 2, Chapter 1134, Acts of the 77th Legislature, Regular Session, 2001;

(8) investment earnings under the Texas product development fund under Section 489.211;

(9) investment earnings under the Texas small business incubator fund under Section 489.212; and

(10) any other amounts received by the state under this chapter.

(c) Money in the fund may be used only to carry out the purposes of this chapter.

(d) The financial transactions of the fund are subject to audit by the state auditor as provided by Chapter 321.

Added by Acts 2003, 78th Leg., ch. 814, Sec. 2.01, eff. Sept. 1, 2003.

Sec. 489.106. ADMINISTRATION OF FUND AND CHAPTER. The office shall administer the fund. In administering the fund and this chapter, the office has the powers necessary to carry out the purposes of this chapter, including the power to:

(1) make, execute, and deliver contracts, conveyances, and other instruments;

(2) impose and collect fees and charges in connection with any transaction and provide for reasonable penalties for delinquent payments or performance; and

(3) issue bonds for economic development projects as that term is defined by Section 2(11)(A) or 4B(a)(2), Development Corporation Act of 1979 (Article 5190.6, Vernon's Texas Civil Statutes).

Added by Acts 2003, 78th Leg., ch. 814, Sec. 2.01, eff. Sept. 1, 2003.

Sec. 489.107. ANNUAL REPORT. On or before January 1 of each year, the office shall submit to the legislature an annual status report on the activities of the bank.

Added by Acts 2003, 78th Leg., ch. 814, Sec. 2.01, eff. Sept. 1, 2003.

Sec. 489.108. PROGRAMS, SERVICES, AND FUNDS UNDER BANK'S DIRECTION. Notwithstanding any other law, the bank shall perform the duties and functions of the office with respect to the following programs, services, and funds:

(1) the Texas Small Business Industrial Development Corporation established under Section 4, Development Corporation Act of 1979 (Article 5190.6, Vernon's Texas Civil Statutes);

(2) the capital access program established under Section 481.405;

(3) the Texas leverage fund;

(4) the linked deposit program established under Section 481.193;

(5) the enterprise zone program established under Chapter 2303;

(6) the industrial revenue bond program;

(7) the defense economic readjustment zone program established under Chapter 2310;

(8) the Empowerment Zone and Enterprise Community grant program established under Section 481.025; and

(9) the renewal community program.

Added by Acts 2003, 78th Leg., ch. 814, Sec. 2.01, eff. Sept. 1, 2003.

SUBCHAPTER C. MISCELLANEOUS PROVISIONS

Sec. 489.151. STATE LIABILITY PROHIBITED. The state and state officers or employees are not liable to participants for grants, loans, or other transactions under this chapter except as specifically provided by law.

Added by Acts 2003, 78th Leg., ch. 814, Sec. 2.01, eff. Sept. 1, 2003.

Sec. 489.152. GIFTS, GRANTS, AND DONATIONS. The office may accept gifts, grants, and donations from any source for the purposes of this chapter.

Added by Acts 2003, 78th Leg., ch. 814, Sec. 2.01, eff. Sept. 1, 2003.

SUBCHAPTER D. PRODUCT DEVELOPMENT AND SMALL BUSINESS INCUBATORS

Sec. 489.201. DEFINITIONS. In this subchapter:

(1) "Board" means the Product Development and Small Business Incubator Board.

(2) "Financing" means a loan, loan guarantee, or equity investment from the product fund to a person for use in the development and production of a product in this state, or a grant, loan, or loan guarantee from the small business fund to a person for use in the development of a small business in this state.

(3) "Office" includes the designee of the office.

(4) "Product" includes an invention, device, technique, or process, without regard to whether a patent has been or could be granted, that has advanced beyond the theoretical stage and has or is readily capable of having a commercial application. The term does not include pure research.

(5) "Product fund" means the Texas product development fund.

(6) "Program" means the product development program or the small business incubator program.

(7) "Small business fund" means the Texas small business incubator fund.

Added by Acts 2003, 78th Leg., ch. 814, Sec. 2.01, eff. Sept. 1, 2003.

Sec. 489.202. PRODUCT DEVELOPMENT AND SMALL BUSINESS INCUBATOR BOARD. (a) The Product Development and Small Business Incubator Board is created in the office.

(b) The bank administers the programs, the product fund, and the small business fund.

Added by Acts 2003, 78th Leg., ch. 814, Sec. 2.01, eff. Sept. 1, 2003.

Sec. 489.203. BOARD MEMBERS; APPOINTMENT; TERMS OF OFFICE. (a) The board consists of nine persons appointed by the governor.

(b) In appointing members of the board, the governor shall appoint:

(1) three persons having significant business leadership experience in technology, particularly experience with the transfer of research results into commercial applications;

(2) two persons employed by institutions of higher education of this state who have experience in technological research and its commercial applications;

(3) two persons experienced and knowledgeable in structuring and providing financing for technological products or businesses; and

(4) two persons who reside in a county of this state with above state average unemployment and below state average per capita income and who have experience and knowledge in technology-related business growth.

(c) Appointed members of the board serve six-year staggered terms, with the terms of three members expiring February 1 of each odd-numbered year.

(d) The governor shall appoint the presiding officer of the board.

(e) The board shall appoint a secretary of the board whose duties may be prescribed by law and by the board.

(f) Appointed members of the board serve without pay but are entitled to reimbursement for their actual expenses incurred in attending meetings of the board or in performing other work of the board if that work is approved by the governor or the governor's designee.

Added by Acts 2003, 78th Leg., ch. 814, Sec. 2.01, eff. Sept. 1, 2003. Amended by Acts 2005, 79th Leg., ch. 40, Sec. 1, eff. May 10, 2005.

Sec. 489.204. REMOVAL OF BOARD MEMBER. (a) It is a ground for removal from the board if an appointed member:

(1) cannot because of illness or disability discharge the member's duties for a substantial part of the term for which the member is appointed; or

(2) is absent from more than half of the regularly scheduled board meetings that the member is eligible to attend during a calendar year unless the absence is excused by majority vote of the board.

(b) The validity of an action of the board is not affected by the fact that the action was taken when a ground for removal of a board member existed.

Added by Acts 2003, 78th Leg., ch. 814, Sec. 2.01, eff. Sept. 1, 2003.

Sec. 489.205. TRAINING OF BOARD MEMBERS. (a) Before an appointed member of the board may assume the member's duties, the member must complete at least one course of the training program established under this section.

(b) A training program established under this section shall provide information to the member regarding:

(1) the enabling legislation that created the board;

(2) the programs operated by the board;

(3) the role and functions of the board;

(4) the rules of the board, with an emphasis on the rules that relate to disciplinary and investigatory authority;

(5) the current budget for the board;

(6) the results of the most recent formal audit of the board;

(7) the requirements of the:

(A) open meetings law, Chapter 551;

(B) open records law, Chapter 552; and

(C) administrative procedure law, Chapter 2001;

(8) the requirements of the conflict of interest laws and other laws relating to public officials; and

(9) any applicable ethics policies adopted by the board or the Texas Ethics Commission.

Added by Acts 2003, 78th Leg., ch. 814, Sec. 2.01, eff. Sept. 1, 2003.

Sec. 489.206. MEETINGS. (a) The board shall hold regular meetings in Austin and other meetings at places and times scheduled by the board in formal sessions and called by the bank.

(b) The board shall develop and implement policies that provide the public with a reasonable opportunity to appear before the board and to speak on any issue under the jurisdiction of the board.

(c) The board shall make minutes of all meetings available in the board's office for public inspection.

Added by Acts 2003, 78th Leg., ch. 814, Sec. 2.01, eff. Sept. 1, 2003.

Sec. 489.207. APPLICABILITY OF OPEN MEETINGS LAW AND ADMINISTRATIVE PROCEDURE LAW. The board is subject to the open meetings law, Chapter 551, and the administrative procedure law, Chapter 2001.

Added by Acts 2003, 78th Leg., ch. 814, Sec. 2.01, eff. Sept. 1, 2003.

Sec. 489.208. STAFF. (a) The employees of the office selected by the executive director of the office for that purpose serve as the staff of the board.

(b) The executive director of the office shall select and supervise the staff of the board and perform other duties delegated to the office by the board.

(c) The executive director of the office shall provide to members of the board and to board staff, as often as necessary, information regarding their qualifications for office or employment under this subchapter and their responsibilities under applicable laws relating to standards of conduct for state officers or employees.

(d) The board shall develop and implement policies that clearly separate the policy-making responsibilities of the board and the management responsibilities of the office, the bank, and the executive director of the office.

Added by Acts 2003, 78th Leg., ch. 814, Sec. 2.01, eff. Sept. 1, 2003.

Sec. 489.209. PROGRAM AND FACILITY ACCESSIBILITY. (a) The board shall comply with federal and state laws related to program

and facility accessibility.

(b) The board shall prepare and maintain a written plan that describes how a person who does not speak English can be provided reasonable access to the board's programs and services.

Added by Acts 2003, 78th Leg., ch. 814, Sec. 2.01, eff. Sept. 1, 2003.

Sec. 489.210. POWERS OF BOARD AND BANK; BONDS. (a) The board and bank have the powers necessary and reasonable to carry out this subchapter and the board may adopt rules, policies, and procedures necessary or reasonable to implement this subchapter.

(b) The bank may issue general obligation bonds, up to the amounts authorized and as provided by Section 71, Article XVI, Texas Constitution, to fund the program.

(c) Not more than an amount equal to five percent of the total amount of bonds issued may be used to pay administrative fees involved in selling the bonds.

Added by Acts 2003, 78th Leg., ch. 814, Sec. 2.01, eff. Sept. 1, 2003.

Sec. 489.211. TEXAS PRODUCT DEVELOPMENT FUND. (a) The Texas product development fund is a revolving fund in the state treasury.

(b) The product fund is composed of proceeds of bonds issued under this subchapter, financing application fees, loan repayments, guarantee fees, royalty receipts, dividend income, money appropriated by the legislature for authorized purposes of the product fund, amounts received by the state from loans, loan guarantees, and equity investments made under this subchapter, amounts received by the state from federal grants or other sources, and any other amounts received under this subchapter and required by the bank to be deposited in the product fund. The product fund contains a program account, an interest and sinking account, and other accounts that the bank authorizes to be created and maintained. Money in the product fund is available for use by the board under this subchapter. Investment earnings under the product fund must be transferred to the fund created under Section 489.105. Notwithstanding any other provision of this subchapter, any money in the product fund may be used for debt service.

(c) Money in the program account of the product fund, minus the costs of issuance of bonds under this subchapter and necessary costs of administering the product fund, may be used only to provide financing to aid in the development and production, including the commercialization, of new or improved products in this state. The bank shall provide financing from the product fund on the terms and conditions that the bank determines to be reasonable, appropriate, and consistent with the purposes and objectives of the product fund and this subchapter, for the purpose of aiding in the development and production of new or improved products in this state.

Added by Acts 2003, 78th Leg., ch. 814, Sec. 2.01, eff. Sept. 1, 2003.

Sec. 489.212. SMALL BUSINESS INCUBATOR FUND. (a) The Texas small business incubator fund is a revolving fund in the state treasury.

(b) The small business fund is composed of proceeds of bonds issued under this subchapter, financing application fees, loan repayments, guarantee fees, royalty receipts, dividend income, money appropriated by the legislature for authorized purposes of the small business fund, amounts received by the state from loans, loan guarantees, and equity investments made under this subchapter, amounts received by the state from federal grants or other sources, and any other amounts received under this subchapter and required by the bank to be deposited in the small business fund. The small business fund contains a project account, an interest and sinking account, and other accounts that the bank authorizes to be created and maintained. Money in the small business fund is available for use by the board under this subchapter. Investment earnings under the small business fund must be transferred to the fund created under Section 489.105. Notwithstanding any other provision of this subchapter, any money in the small business fund may be used for debt service.

(c) Money in the project account of the small business fund, minus the costs of issuance of bonds under this subchapter and necessary costs of administering the small business fund, may be used only to provide financing to foster and stimulate the development of small businesses in this state. The bank shall provide financing from the small business fund on the terms and conditions that the bank determines to be reasonable, appropriate,

and consistent with the purposes and objectives of the small business fund and this subchapter, for the purpose of fostering and stimulating the development of new or existing small businesses in this state.

Added by Acts 2003, 78th Leg., ch. 814, Sec. 2.01, eff. Sept. 1, 2003.

Sec. 489.213. ELIGIBLE PRODUCTS AND BUSINESSES; FINANCING. (a) Financing may be made under this subchapter only for a product or small business approved by the bank.

(b) In determining eligible products and businesses, the bank shall give special preference to products or businesses in the areas of semiconductors, nanotechnology, biotechnology, and biomedicine that have the greatest likelihood of commercial success, job creation, and job retention in this state. The bank shall give further preference to providing financing to projects or businesses that are:

(1) grantees under the small business innovation research program established under 15 U.S.C. Section 638, as amended;

(2) companies formed in this state to commercialize research funded at least in part with state funds;

(3) applicants that have acquired other sources of financing;

(4) companies formed in this state and receiving assistance from designated state small business development centers; or

(5) applicants who are residents of this state doing business in this state and performing financed activities predominantly in this state.

(c) The board shall adopt rules governing the terms and conditions of the financing, specifically including requirements for appropriate security or collateral, equity interest, and the rights and remedies of the board and bank in the event of a default on the loan. The rules must include a requirement that applicants report to the bank on the use of money distributed through either fund.

(d) Before approving the provision of financing to a person, the bank shall enter into an agreement with the person under which the bank will obtain an appropriate portion of royalties, patent rights, equitable interests, or a combination of those royalties, rights, and interests from or in the product or the proceeds of the product for which financing is requested. Contracts executed under this subchapter must include agreements to ensure proper use of funds and the receipt of royalties, patent rights, or equity interest, as appropriate.

(e) The board may appoint an advisory committee of experts in the areas of semiconductors, nanotechnology, biotechnology, and biomedicine to review projects and businesses seeking financing from the bank.

(f) Repealed by Acts 2003, 78th Leg., 3rd C.S., ch. 10, Sec. 9.02.

(g) A claim of the state for a payment owed to the state under this subchapter by a person who has been provided financing has priority over all other claims against the person.

(h) Any business in this state is eligible for funding distributed through the small business incubator fund if it is determined that the business is substantially likely to develop and expand the opportunities for small businesses in the semiconductor, nanotechnology, biotechnology, or biomedicine industry in this state.

Added by Acts 2003, 78th Leg., ch. 814, Sec. 2.01, eff. Sept. 1, 2003. Amended by Acts 2003, 78th Leg., 3rd C.S., ch. 10, Sec. 9.01, 9.02, eff. Oct. 20, 2003.

Sec. 489.214. APPLICATION PROCESS. (a) To apply for financing from the bank, an applicant shall submit to the bank:

(1) an application for financing on a form prescribed by the bank; and

(2) a reasonable application fee set by the bank.

(b) The application must include a business plan containing the information required by the bank, including at a minimum:

(1) information regarding:

(A) the history and financial condition of the applicant, including the applicant's income statement;

(B) the applicant's present markets and market prospects; and

(C) the integrity of the applicant's management;
(2) a statement of the feasibility of the product for which financing is requested, including the state of development of any product to be developed and the proposed schedule of its commercialization; and

(3) if applicable, documentation of attempts to obtain private financing.

(c) The bank shall determine, with respect to each application for financing, whether:

(1) the product or business for which financing is requested is economically sound;

(2) there is a reasonable expectation that the product or business will be successful;

(3) the product or business will create or preserve jobs and otherwise benefit the economy of the state;

(4) the applicant has the management resources and other funding to complete the project;

(5) financing is necessary because full financing is unavailable in traditional capital markets or credit has been offered on terms that would preclude the success of the project; and

(6) there is reasonable assurance that the potential revenues to be derived from the sale of the product will be sufficient to repay any financing approved by the bank.

(d) After considering the application and all other information it considers relevant, the bank shall approve or deny the application and promptly notify the applicant of its decision. Added by Acts 2003, 78th Leg., ch. 814, Sec. 2.01, eff. Sept. 1, 2003.

Sec. 489.215. INFORMATION CONFIDENTIAL. (a) Information described by Subsection (b) collected, assembled, or maintained by or for the bank is confidential and may not be disclosed by the bank, the board, the office, or the executive director of the office.

(b) This section applies to information in any form provided by or on behalf of an applicant for financing or a recipient of financing under this subchapter, including information contained in, accompanying, or derived from any application or report, that relates to a product, to the development, application, manufacture, or use of a product, or to the markets, market prospects, or marketing of a product and that is proprietary information of actual or potential commercial value to the applicant or recipient that has not been disclosed to the public. Confidential information includes scientific and technological information, including computer programs and software, and marketing and business operation information, regardless of whether the product to which the information relates is patentable or capable of being registered under copyright or trademark laws or has a potential for being sold, traded, or licensed for a fee. This section does not make confidential information in an account, voucher, or contract relating to the receipt or expenditure of public funds by the bank, board, or the department or its successor under this subchapter.

(c) Any application for financing that is withdrawn by the applicant before approval or funding or that is denied by the bank shall be returned to the applicant promptly on request, together with all materials submitted by or on behalf of the applicant that relate to the application, except that the bank may retain a record of the submission and disposition of the application that does not include any information described by Subsection (b). Added by Acts 2003, 78th Leg., ch. 814, Sec. 2.01, eff. Sept. 1, 2003.

Sec. 489.216. PROGRAM COORDINATION. The bank and the office shall coordinate the administration and funding of the programs. Added by Acts 2003, 78th Leg., ch. 814, Sec. 2.01, eff. Sept. 1, 2003.

Sec. 489.217. EXPENDITURES. All expenditures of the program must be approved on behalf of the state by the bank. Expenses incurred by the program in the operation and administration of its programs and affairs, including expenditures for employees and program assistance or development, shall be paid out of fees collected or revenues generated under this subchapter.

Added by Acts 2003, 78th Leg., ch. 814, Sec. 2.01, eff. Sept. 1, 2003.